

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Milardo	Team: Team # 2	CCRB Case #: 201202108	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/09/2011 , Saturday, 12/10/2011 12:30 AM	Location of Incident: § 87(2)(b)	Precinct: 09	18 Mo. SOL 6/10/2013	EO SOL 6/10/2013	
Date/Time CV Reported Mon, 02/13/2012 12:12 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/16/2012 12:57 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Eric Dym	00577	933762	PSA 4
2. Officers			
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Maria Veliz	11811	927820	009 PCT
2. POM Thomas Richards	19086	927410	PSA 4
3. POM Victor Rivas	16236	919623	PSA 4
4. POM Thomas Dunne	20950	936530	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Discourtesy: Officers spoke discourteously to individuals.	§ 87(2)(b)
B. An officer	Off. Language: An officer made remarks to individuals based upon socioeconomic status.	§ 87(2)(b)
C.SGT Eric Dym	Force: Sgt. Eric Dym used physical force against § 87(2)(b)	§ 87(2)(b)
D. Officers	Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 10, 2012, § 87(2)(b) filed a complaint with the Internal Affairs Bureau (IAB Log #12-08941) and it was received by the CCRB on February 16, 2012. On December 10, 2011, at approximately 12:30 a.m. § 87(2)(b) was at a family event at the § 87(2)(b) located at § 87(2)(b) in Manhattan, when police responded to a call of shots fired. § 87(2)(b) and his friend, § 87(2)(b) were both ultimately arrested for obstruction of governmental administration, resisting arrest, and disorderly conduct: refusing to disperse. The following allegations resulted:

- **Allegation A - Discourtesy: Officers spoke discourteously to individuals.**
§ 87(2)(g)
- **Allegation B - Offensive Language: An officer made remarks to individuals based upon socioeconomic status.**
§ 87(2)(g)
- **Allegation C - Force: Sgt. Eric Dym used physical force against § 87(2)(b)**
- **Allegation D- Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)**
§ 87(2)(b), § 87(2)(g)

This case was originally assigned to Investigator Souad Moussawi. Upon her resignation was reassigned to Investigator Sarah Milardo on July 23, 2012.

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

Statements Made to Medical Personnel (encl.E1-E20)

On December 11, 2011, § 87(2)(b) went to § 87(2)(b) Hospital where he made the following statement: While being apprehended by the police, § 87(2)(b) was pinned to the ground and hit multiple times in the back with fists and knees.

CCRB Statement (encl. C4-C10)

§ 87(2)(b) was interviewed at the CCRB on March 9, 2012 and provided a phone statement on October 22, 2012. § 87(2)(g) On December 10, 2011, at approximately 11:00 p.m. § 87(2)(b) was at a family event at the § 87(2)(b) located at § 87(2)(b) in Manhattan. As he was taking pictures, an individual ran into the center of the event space and screamed that someone had been shot. People began to panic as they tried to flee the area.

As § 87(2)(b) helped people exit the building, approximately twenty uniformed and plainclothed officers responded to the location, but § 87(2)(b) continued to try to leave with the intention of going home. When § 87(2)(b) reached § 87(2)(b) and § 87(2)(b) he observed unidentified officers and PO1 (white, male, 6'1" tall, over 200 pounds, dirty blonde hair, no facial hair, uniform) yelling at unidentified civilians. The officers told the civilians to "get the fuck out" of the location, and an officer stated that because the individuals lived in "the projects" they did not pay rent. § 87(2)(b) believed that the officer who made the offensive comment was § 87(2)(b)'s arresting officer, but stated he could not confirm this or recognize the officer's face in a photo array.)

§ 87(2)(b) asked PO1 why the officers were acting as they were and said that he was a marine. PO1 said that he did not give a "fuck" and that he was an ex-marine as well. PO1 then pushed § 87(2)(b) so that § 87(2)(b) landed on his back on the ground.

§ 87(2)(b) approached § 87(2)(b) and attempted to pick him up off the ground. An officer, identified via investigation as Sgt. Eric Dym of PSA 4, punched § 87(2)(b) in his left temple. Officers then rushed on top of § 87(2)(b) even though § 87(2)(b) was not resisting. Two unidentified officers then put their knees into § 87(2)(b)'s back and handcuffed him. While handcuffed, the officers pushed and pulled his body in various directions. Various unidentified officers then punched § 87(2)(b) in his ribs and face. § 87(2)(b) was arrested for disorderly conduct, resisting arrest, and obstructing governmental administration and transported to the precinct via police car.

From the incident, § 87(2)(b) sustained a bruise to his left temple and scrapes to his right temple and left knee. He experienced pain to his ankles and back. He sought medical attention at § 87(2)(b) Hospital on § 87(2)(b).

A HIPAA form was sent to § 87(2)(b) to be signed on March 14, 2012. Follow up calls to check on the status of the HIPAA form were made on April 5, 2012, April 16, 2012, May 2, 2012, and May 21, 2012. On July 16, 2012, § 87(2)(b) came to the CCRB. He would not sign a HIPAA form but dropped off medical records he received from § 87(2)(b) Medical Center.

Photo Array

§ 87(2)(b) was offered a photo array on October 22, 2012 to help determine which officer made offensive comments. § 87(2)(b) declined to view it and stated that he would not be able to recognize any of the officers faces.

Victim: § 87(2)(b)

- § 87(2)(b)

Phone Statement (encl. C12)

§ 87(2)(b) provided a phone statement on June 27, 2012. While fleeing the scene of gunfire at the § 87(2)(b) § 87(2)(b) was pushed to the ground by an unidentified officer. Once he was on the ground, he was unable to see what happened around him. § 87(2)(b) did not want to file a complaint against the officer who pushed him because § 87(2)(b) felt that he invaded the officer's space and that the officer most likely felt threatened. § 87(2)(b) believed the officer was justified in pushing him.

Victim: FRANCIS RODRIQUEZ

- § 87(2)(b)

Phone Statement (encl. C11)

§ 87(2)(b) provided a phone statement on April 4, 2012. As § 87(2)(b) arrived at the § 87(2)(b) to pick up a family member, she observed unidentified officers cursing at unidentified civilians. She transported her family member to another location and returned to the scene where an unidentified officer pulled her hair, hit her head against the ground and arrested her.

At the time § 87(2)(b) provided her phone statement, she would not commit to providing an in-person statement. Four more calls were placed to § 87(2)(b) on May 15, 2012, June 18, 2012, June 22, 2012 and July 2, 2012 and messages were left. Three unreturned letters were sent on April 4, 2012, April 16, 2012, and May 15, 2012.

Attempts to Contact Civilians

§ 87(2)(b) was also identified as being arrested during the incident. COLE, Whitepages, and Lexis Nexis searches did not reveal a phone number for § 87(2)(b). Two letters were sent on June 19, 2012 and June 26, 2012 and were returned with messages noting: “Attempted – not known. Unable to forward.”

NYPD Statements:

Witness Officer: OFFICER THOMAS DUNNE

- § 87(2)(b)
- *PO Dunne worked from 6:00 p.m. on December 9, 2011 until 2:35 a.m. on December 10, 2011 and was assigned to precinct anti-crime for PSA 4 with Sgt. Dym. He was in plainclothes and assigned to an unmarked vehicle.*

Memo Book (encl. D1-D3)

At 12:30 a.m. a call was received for a male shot at the § 87(2)(b) and police respond. At 12:35 a.m. a large crowd formed at the crime scene and refused to leave. The individuals pushed forward while being loud and boisterous. Two were placed under arrest for disorderly conduct, obstructing governmental administration, and resisting arrest.

CCRB Statement (encl. D4-D6)

PO Dunne was interviewed at the CCRB on October 11, 2012.

On December 10, 2011 at approximately 12:30 a.m., PO Dunne and Sgt. Dym responded to a call of a male shot at § 87(2)(b) in Manhattan. The complex was set up so that the buildings formed a perimeter with a square courtyard in the middle. When they arrived they parked on the street and ran into the courtyard where several other officers from PSA 4, 9th Precinct, and 13th Precinct were present. There was a large crowd of a couple-of-hundred screaming civilians, however, PO Dunne could not decipher what exactly was being shouted. Most people began to disperse and a group of 5 or 6 officers started to put up crime scene tape.

A few people refused to go outside of the tape and told the officers that they could not tell them what to do and to “get the fuck out of our faces.” The individuals were given several verbal

orders to move behind the tape, but they continued to refuse. The individuals pushed past the tape and began to push officers, including PO Dunne. PO Dunne did not tell the individuals to “get the fuck out of the way” or hear other officers say this. PO Dunne did not say nor hear any other officers use profanities. PO Dunne never spoke with an individual about being a marine, however, he used to be a marine. PO Dunne never said and did not hear any other officer say that the individuals did not pay rent because they lived in “the projects.”

One individual used his hands to try to push past PO Dunne and PO Dunne grabbed the individual by his shoulders and arms in attempt to place him in handcuffs. PO Dunne was unsure who the individual was and did not recognize § 87(2)(b) when shown his photo. The individual resisted by kicking, flailing and punching at PO Dunne and another unidentified officer who assisted PO Dunne. PO Dunne told the individual several times to stop fighting and resisting. PO Dunne pulled the individual down so they were both on the ground. Neither PO Dunne nor the assisting officer punched or swung at the individual to take him to the ground. The individual landed face down and PO Dunne knelt beside and leaned over the individual. PO Dunne did not, nor see the other officer, use his knee to place it in the individuals back to subdue him. PO Dunne did not, nor see any other officer, punch this individual in the face or ribs. PO Dunne did not notice any injuries on the individual nor hear him complain of any injuries. After 20-30 seconds, the individual was fully handcuffed. The individual was then placed in the van and brought to the precinct. PO Dunne stayed at the crime scene.

Subject Officer: SERGEANT ERIC DYM

- § 87(2)(b)
- *Sgt. Dym worked from 2:50 p.m. on December 9, 2011 until 2:44 a.m. on December 10, 2011 with PO Victor Rivas. He was assigned as anti-crime patrol supervisor for PSA 4. He was in uniform and assigned to marked patrol vehicle #§ 87(2)(b)*

Memo Book (encl. D7-D9)

12:30 a.m. Additional units are needed at § 87(2)(b) 1:00 a.m. two under arrest.

CCRB Statement (encl. D10-D11)

Sgt. Dym was interviewed at the CCRB on September 4, 2012. § 87(2)(g)

When they arrived, Sgt. Dym immediately saw two officers struggling to place an individual, identified via investigation as § 87(2)(b) in handcuffs. § 87(2)(b) whom Sgt. Dym confirmed the identity of by viewing his arrest photo, tried to intervene with the officers by charging toward them. Sgt. Dym grabbed § 87(2)(b) in a bear hug and brought him down to the ground. Sgt. Dym was unsure if § 87(2)(b) landed on his front or backside. § 87(2)(b) resisted by pushing and pulling away from Sgt. Dym and refusing to put his arms behind his back. Sgt. Dym and an unidentified officer each grabbed § 87(2)(b)'s arms and handcuffed him. While he was handcuffed, § 87(2)(b) did not physically resist, but continued to tell the officers to go “fuck themselves.” Once he was handcuffed, neither Sgt. Dym nor any other officers made any physical contact with § 87(2)(b) was then brought to the precinct by unidentified officers while Sgt. Dym stayed at the scene for approximately 30 minutes.

Sgt. Dym did not punch § 87(2)(b) in the temple or the ribs and did not see anyone else strike § 87(2)(b) did not complain of any injuries. Sgt. Dym did not interact with

anyone who identified themselves as a marine. Sgt. Dym used to be a marine, but never spoke of this during the incident.

Witness Officer: OFFICER THOMAS RICHARDS

- § 87(2)(b)
- *PO Richards worked from 6:00 p.m. on December 9, 2011 to 12:30 a.m. on December 10, 2011 assigned to PSA 4 anti-crime with PO William McGarry. He was in uniform and assigned to an unmarked vehicle.*

Memo Book (encl.D12-D14)

12:40 p.m. male shot outside 635 East 12th Street. 1:10 a.m. transported 4 individuals to 9 precinct.

Complaint and Arrest Reports (encl. F18-F23)

PO Richards reported that § 87(2)(b) and § 87(2)(b) refused to leave the crime scene. After being told several times by officers to leave the area, § 87(2)(b) and § 87(2)(b) became loud and boisterous, telling the officers to “Go fuck yourselves.” § 87(2)(b) and § 87(2)(b) caused a larger crowd to form and the crowd began to push forward. At this time, both defendants were taken to the ground and placed in handcuffs. While being handcuffed, § 87(2)(b) and § 87(2)(b) flailed their arms, preventing officers from effecting the arrests.

CCRB Statement (encl. D15-D16)

PO Thomas Richards was interviewed at the CCRB on August 8, 2012. His statement was generally consistent with PO Dunne’s and Sgt. Dym’s testimonies with additions noted below.

PO Richards assisted Sgt. Dym with subduing § 87(2)(b) PO Richards did not punch or knee § 87(2)(b) nor see any other officer do this.

Witness Officer: OFFICER MARIA VELIZ

- § 87(2)(g)
- *PO Veliz worked from 9:00 p.m. on December 9, 2011 to 5:35 a.m. on December 10, 2011 assigned to 9 Precinct anti-crime with PO Michael Giuffre. She was in plainclothes and assigned to an unmarked motor vehicle #§ 87(2)(b)*

Memo Book (encl. D22-D25)

12:35 a.m. One under arrest at § 87(2)(b) § 87(2)(b) for resisting arrest, assault on a police officer, and disorderly conduct during the investigation of a shooting. Pick-up in front of § 87(2)(b)th § 87(2)(b) at approximately 1:10 a.m.

CCRB Statement (encl. D26-D27)

PO Veliz was interviewed at the CCRB on October 11, 2012. Her statement was generally consistent with PO Dunne’s and Sgt. Dym’s testimonies with additions noted below.

PO Veliz and PO Giuffre were patrolling the area when they heard shots fired and saw individuals flee the area in multiple directions. PO Veliz made a call for back-up over her radio. PO Veliz assisted in the arrest of § 87(2)(b) and did not have physical contact with any other individuals while at the scene.

PO Veliz was not involved in subduing or arresting two black males. PO Veliz did not see any civilians and officers fighting and did not see any officers subdue two black males. PO Veliz was shown a photo of § 87(2)(b) however, she did not recognize him.

Additional Officers Interviewed

Sgt. Dym's operator, PO Victor Rivas, appeared at the CCRB on September 25, 2012. He testified that he did not respond to this incident because he was supervising an emotionally disturbed person at § 87(2)(b) Hospital as documented in his memo book (encl. D17-D21).

Officers Not Interviewed

Several officers from PSA 4, 9th Precinct, and 13th Precinct responded to calls of shots fired at the § 87(2)(b). After interviewing the arresting officer and his partners, it became apparent that § 87(2)(b) and § 87(2)(b) arrests were isolated to PO Richards, Sgt. Dym, and PO Dunne. There were other arrests in effect, thus occupying the attention of other officers.

Medical Documents provided by § 87(2)(b) (encl. E1-E20)

On December 11, 2011 at 2:29 p.m., § 87(2)(b) went to § 87(2)(b) Medical Center. The records note the following:

Emstat Assessment:

§ 87(2)(b) x-ray results were negative and he was prescribed Ibuprofen for pain management.

Physician Documentation Sheet

The medical evaluation states that § 87(2)(b) was negative for any tenderness and bruising in his back (encl. E10).

NYPD Documents

SPRINT (encl. F1-F17)

On December 10, 2011 at 12:13 a.m. housing authority police department received a call of shots fired in the courtyard at East 12th Street between Avenue B and Avenue C. An individual was seen fleeing the scene. At 12:14 a.m., a male caller reported that the perpetrator ran towards an alley way and jumped into a blue or black SUV, possibly a Honda or a Mazda, and headed west. Screams could be heard from the housing complex. At 12:15 a.m. several more calls were made to report eight shots fired and that a group of people were running through the alleyway. At 12:21 a.m. EMS arrived on scene. At 12:32 a.m., special operations were in the courtyard and were canvassing roof tops for air mail. One patient was being treated at the scene. The following sectors responded to the scene: 13A, 13B, 13E, and 9C.

Arrest Photo (encl. C7)

§ 87(2)(b)'s arrest photo shows no indication of injuries to the face.

Arrest for Incident and Disposition (encl. G1-G2)

- All of § 87(2)(b)'s criminal charges in connection with the incident on December 10, 2011 were dismissed on § 87(2)(b).

Status of Civil Proceedings (encl. G7-G9)

- As of October 17, 2012, ten months following the incident, § 87(2)(b) has not filed a Notice of Claim with the City of New York in regard to this incident.

Civilian Criminal History (encl. G1-G6)

- As of January 7, 2013, Office of Court Administration records reveal no additional criminal convictions for § 87(2)(b) within the past ten years.

§ 87(2)(b)

§ 87(2)(b)

Subject Officer CCRB History (encl. B1)

- Sgt. Dym has been a member of the service for 8 years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

§ 87(2)(b) alleged that several officers spoke discourteously to a group of people. Therefore, Allegation A is pleaded against “Officers.”

The officer who allegedly told individuals that they did not pay rent because they lived in, “the projects,” could not be identified. § 87(2)(b) refused to view a photo array while at the CCRB and identified the subject of this allegation to be a former marine. The investigation determined that at least two officers were prior marines and generally fit the description provided by § 87(2)(b). Without his continued cooperation, the investigation could not the subject officer. As such, Allegation B is pleaded against “An officer.”

Because Sgt. Dym admitted to using force and the remainder could not be definitively identified, Allegations C and D are pleaded to Sgt. Dym and “Officers.”

Allegations not Plead

§ 87(2)(b) alleged that the officer who used offensive remarks also pushed § 87(2)(b). The officer who used offensive remarks could not be identified. While PO Dunne admitted to subduing an individual who tried to push past him, he could not confirm the identity of this individual. Furthermore, § 87(2)(b) provided a phone statement stating he felt the officer was justified in subduing him and therefore, would not participate further in the investigation. Without § 87(2)(b)'s cooperation, it could not be confirmed that PO Dunne was the officer to use physical force against § 87(2)(b). Therefore, the force used against § 87(2)(b) has been subsumed under Allegation D.

Investigative Findings and Recommendations

Allegation A - Discourtesy: Officers spoke discourteously to § 87(2)(b) and individuals.

§ 87(2)(b) alleged that when officers responded to the event space, several officers told the crowd to “get the fuck out” of the location.

When an officer uses profanity in trying to secure a civilian's cooperation or for other legitimate law enforcement ends, the profanity may not rise to the level of misconduct. Police Department v. Dukes, OATH Index Nos. 1137-39/00 (encl. A1-A9).

§ 87(2)(b), § 87(2)(g)

Allegation B - Offensive Language: An officer made remarks to individuals based upon socioeconomic status.

§ 87(2)(b) alleged that an officer told a crowd of individuals that because they lived in the "projects," they must not pay rent. None of the officers interviewed admitted saying nor hearing any officer state this.

§ 87(2)(g)

Allegation C - Force: Sgt. Eric Dym used physical force against § 87(2)(b)

Allegation D - Force: Officers used physical force against § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that while he tried to help § 87(2)(b) off the ground, an officer punched him in the face. Sgt. Dym admitted that when § 87(2)(b) attempted to interfere with § 87(2)(b)'s arrest, he intervened by tackling § 87(2)(b) to the ground. § 87(2)(b) alleged that while being placed under arrest, various officers punched him in his left temple and again in his ribs and face. Medical documents revealed that § 87(2)(b) alleged that he was punched and kned in the back while on the ground. None of the other officers interviewed stated seeing any additional physical force other than the initial apprehension.

Patrol Guide Procedure 203-11 states that officers may use only minimal and necessary force to overcome resistance and effect an arrest (encl. A10).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) [Redacted]
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§ 87(2)(b), § 87(2)(g) [Redacted]
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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
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Reviewer: _____
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